

The Declaration establishes that the Applicants possessed the claimed invention of the present application prior to September 19, 1995, which is the effective date of both the Davis '381 and '605 patents. As the Davis '605 patent was not issued as a U.S. Patent or filed more than one year before the earliest filing date of the present application and the Inventors possessed the claimed invention prior to the filing date of the Davis '605 patent, the Davis '605 patent cannot be properly cited as prior art under 35 U.S.C. § 102(e). Therefore, in view of the submission of the Declaration, Applicants respectfully submit that the Examiner's rejection be withdrawn. For the Examiner's convenience, Applicants submit herewith a copy of the Declaration and accompanying Exhibit A which were both filed with the response dated March 21, 2002 in connection with the above-identified application.

The Rejection Under 35 U.S.C. § 103(a) Should Be Withdrawn

The Examiner has rejected claims 1 and 22 as being unpatentable under 35 U.S.C. § 103(a) over the Davis '605 patent in view of Smith (U.S. Patent No. 5,654,176). Applicants submit that in view of the submission of the Declaration showing invention prior to September 19, 1995, the Davis '605 patent is no longer available as a proper prior art reference for the Examiner's rejection under 35 U.S.C. § 103(a), see discussion *supra*. Further, Applicants submit that Smith is directed to a fusion protein comprising glutathione-S-transferase and does not disclose any polypeptides with an amino acid sequence of SEQ ID NO:2. Accordingly, Applications respectfully submit that the Examiner's rejection under 35 U.S.C. § 103(a) should be withdrawn.

Double Patenting

The rejection of claims 23-26 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,074,862 has been maintained. With respect to the rejection of claims 23-26, Applicants request that this rejection be held in abeyance until such time as allowable subject matter is indicated.

CONCLUSION

Applicants respectfully request that the remarks of the present Reply be entered and made of record in the instant application, and that the Examiner reconsider the rejections in view of these remarks. Accordingly, after entry of this Amendment, all of the pending claims should be in condition for allowance. Withdrawal of the rejections and allowance of all the claims is earnestly requested. Applicants respectfully request that the Examiner call the undersigned at (212) 790-9090 if any questions or issues remain.

Respectfully submitted,

Date:
September 18, 2003

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